

BEFORE THE OIL CONSERVATION DIVISION
OF THE STATE OF NEW MEXICO

IN THE MATTER OF THE APPLICATION OF)
YATES PETROLEUM CORPORATION, YATES)
DRILLING COMPANY, MYCO INDUSTRIES, INC.)
AND ABO PETROLEUM CORPORATION)
FOR THE DETERMINATION OF REASONABLE)
WELL COSTS.)

CASE NO. 8901

APPLICATION

COMES NOW YATES PETROLEUM CORPORATION, YATES DRILLING
COMPANY, MYCO INDUSTRIES, INC. and ABO PETROLEUM CORPORATION
(hereinafter collectively referred to as applicant) by its attorneys
and in support hereof, respectfully states:

1. That applicant is a working interest owner in the
Grynberg State 1-20. Said well was drilled pursuant to Order No.
R-7393 in Case No. 7984 wherein the Commission ordered all
mineral interests from the surface through and including the Abo
formation underlying the SW/4 and all mineral interests from the
top of the Wolfcamp formation to the Precambrian formation underlying
the W/2, all in Section 20, Township 9 South, Range 27 East,
N.M.P.M., Chaves County, New Mexico, pooled to form a standard
160 acre and a 320 acre proration unit to be dedicated to the

Grynberg State 1-20. Jack J. Grynberg was designated as the Operator of the well. A copy of Order No. R-7393 is attached hereto and made a part hereof as Exhibit "A."

2. Applicant owns 25% of the working interest attributable to the Abo formation, and 62.5% of the working interest attributable to the Precambrian formation.

3. Finding No. 25 of Order No. R-7393 states: "That estimated well costs for the Abo formation, except for costs directly attributable to the Precambrian, should be estimated on the basis of depth for each formation and that costs for the Abo formation should not exceed 81.89 % of the total cost of the proposed well, (5200 foot Abo depth/6350 foot total depth = 0.8189)." Further, the Commission in Order No. R-7393, page 5, paragraph No. 4 ordered, "That the itemized schedule of well costs shall be prepared to reflect actual well costs properly attributable to each zone in accordance with Finding No. (25) in this Order."

4. Pursuant to the Commission's Order and the estimated well costs submitted to applicant by Grynberg, applicant prepaid \$215,706.26 to Grynberg as its share of the estimated well costs.

5. The well was spudded on February 1, 1984, and completed on April 1, 1984, as shown on Form C-105, Well Completion

or Recompletion Report and Log, filed by Grynberg with the Oil Conservation Division. A copy of said form, C-105, is attached hereto and made a part hereof as Exhibit "B."

6. Grynberg did not furnish the Commission or each working interest owner an itemized schedule of actual well costs within 90 days following completion of the well as required in Commission Order R-7393, page 5, paragraph No. 6.

7. Applicant requested from Grynberg an itemized schedule of actual well costs. An itemized schedule was not furnished and applicant audited Grynberg's records on June 24 through June 28, 1985.

8. On November 25, 1985, Yates received a letter dated November 22, 1985, wherein Grynberg purported to make an adjustment for an overpayment of \$2,608.31. Grynberg's apportionment of costs was based solely on the working interest ownership in the Precambrian formation, contrary to the Commission's Order. Attached hereto and made a part hereof as Exhibit "C" is a copy of Grynberg's letter of November 22, 1985 and its attached schedules.

9. Applicant has taken exception to Grynberg's well cost adjustment, and by letter dated January 25, 1986, notified Grynberg of its exception, and furnished a copy of its calculation

of the well costs pursuant to Commission Order R-7393. Applicant further demanded a refund of overpayment of advanced costs of \$87,116.89. Grynberg has failed to respond to applicant's letter of January 24, 1986. A copy of Yates' letter of January 24, 1986 with attachments is attached hereto and made a part hereof as Exhibit "D."

WHEREFORE, applicant prays:

A. That this application be set for hearing before an examiner, and that notice of said hearing be given as required by law.

B. That upon hearing the Division enter its order determining reasonable well costs and a refund, if applicable, of any overpayments made by applicant to Grynberg.

C. And for such other relief as may be just in the premises.

Yates Petroleum Corporation
Yates Drilling Company
Myco Industries, Inc.
Abo Petroleum Corporation

By: 

Ernest L. Carroll
LOSEE & CARSON, P.A.
P.O. Drawer 239
Artesia, New Mexico 88210
(505) 746-3508

Attorneys for Applicant

STATE OF NEW MEXICO
DEPARTMENT OF ENERGY AND MINERALS
OIL CONSERVATION COMMISSION

RECEIVED

JAN 24 1978

OIL CONSERVATION DIVISION

IN THE MATTER OF THE HEARING
CALLED BY THE OIL CONSERVATION
COMMISSION FOR THE PURPOSE OF
CONSIDERING:

THE APPLICATION OF YATES DRILLING
COMPANY, MYCO INDUSTRIES, INC.,
AND ABO PETROLEUM CORPORATION FOR
DETERMINATION OF REASONABLE WELL
COSTS.

CASE: 8901
ORDER: R-7393-b

APPLICATION OF GRYNBERG
PETROLEUM COMPANY FOR REHEARING

COMES NOW GRYNBERG PETROLEUM COMPANY pursuant to the provisions of Section 70-2-25 NMSA (1978) and applies to the Oil Conservation Commission of New Mexico for a Rehearing of the above captioned case and order, and in support thereof states:

PARTIES:

1. Petitioner ("Grynberg") is a duly organized corporation doing business in the State of New Mexico, and is the operator of the Grynberg State I-20 Well located in W/2 of Section 20, T9S, R27E, NMPM, Chaves County, New Mexico.

2. The applicants in Case 8901 are Yates Petroleum Corporation, Yates Drilling Company, Myco Industries and

Abo Petroleum Corporation ("Yates") and are corporations duly organized under the laws of the State of New Mexico and are working interest owners in the Grynberg State I-20 Well.

3. The Oil Conservation Commission of the State of New Mexico, ("Commission") is a statutory body created and existing under the provisions of the Oil & Gas Act, Sections 70-2-1 through 70-2-36 NMSA (1978), laws of the State of New Mexico.

STATEMENT OF FACTS:

1. Grynberg owns the oil and gas working interest for the E/2SW/4 and SW/4SW/4 of Section 20.

2. Yates owns the oil and gas working interest for the NW/4 and the NW/4SW/4 of Section 20.

3. For purposes of this case, the W/2 of Section 20 would be dedicated to the PrePermian deep gas formation (Deep) in which Grynberg has 37.5 interest and Yates has 62.5% interest.

4. The SW/4 of Section 20 would be dedicated to the shallow gas formation (Abo) in which Grynberg would have a 75% interest and Yates would have a 25% interest.

5. The NW/4SW/4 being the 40-acre tract upon which the subject well is located would be a 40-acre oil well dedication for the San Andres oil potential of which Yates held 100% prior to the forced pooling order.

6. Both Grynberg and Yates sought to drill a well in the W/2 of Section 20 and each filed a compulsory pooling application to force pool the other.

7. Grynberg's force pooling case against Yates was docketed as Commission Case 7984.

8. Yates also filed a forced pooling case against Grynberg which was docketed as Commission Case 7983.

9. Both cases were consolidated and heard by the Commission on October 18, 1983 and on December 2, and 3rd, 1983 the Commission entered Order R-7393 approving the Grynberg application and Order R-7392 denying the Yates application.

10. On January 12, 1984, all of the Yates interests signed the Grynberg AFE for the Abo test and the AFE for the Deep Test and prepaid Grynberg \$215,706.26 for the drilling and completion of the well. (See Grynberg Exhibit 2 - June hearing).

11. On February 1, 1984 Grynberg spudded the Grynberg State I-20 well and completed the well on April 1, 1984 for a total cost of \$340,956.72.

12. On May 22, 1986 Yates filed an application with the Commission requesting a hearing to determine reasonable well costs.

13. At the June hearing Yates agreed that \$340,956.72 were the reasonable costs of the well but

objected to the method used by Grynberg to allocate those costs between Grynberg and Yates for the well.

14. Under the provisions of paragraph (25) of the Grynberg Compulsory Pooling Order R-7393, the Commission apportioned the costs between the Abo formation and the Deep formation as follows:

(25) That estimated well costs for the Abo formation, except for costs directly attributable to the Precambrian*, should be estimated on the basis of depth for each formation and that costs for the Abo formation should not exceed 81.89 percent of the total costs of the proposed well, (5200 foot Abo depth/6350 foot total depth - 0.8189).

* The word "Precambrian" was later corrected by the Commission Nunc Pro Tunc Order to correctly state the PrePermian meaning from the top of the Wolfcamp formation to the base of the Pennsylvanian formation, i.e., the deep formation.

15. On June 19, 1986 the Commission held the first of two hearings on the Yates Application (herein referred to as the "June hearing").

16. At the June hearing Yates contended that the Commission should first allocate to the Abo formation all the direct costs attributable to that zone, then allocate all of the direct costs attributable to the Deep formation and then divide the balance on a ratio of 81.89% to the Abo and 18.11% to the Deep zone. Using this formula, Yates contended that its share of the costs of the well should be \$125,589.37 (See Yates Exhibit 1 - June hearing).

17. At the same hearing, Grynberg contended that subsequent to the entry of Order R-7393, two important changes had occurred:

(a) That Yates has signed the AFE thus constituting a contractual agreement between the parties which substitute for the compulsory pooling order; and

(b) That the San Andres oil zone on 40-acre spacing was of sufficient potential to require that it share in the cost allocation for the well.

18. Grynberg contended that should the Commission agree to allocate the costs of the well among the San Andres, Abo and Wolfcamp, and assuming that Yates held 100% of the San Andres zone, then Yates share of the costs of the well would be \$169,767.64. (See Grynberg Exhibit 9 and page 54 Transcript -June hearing).

19. Grynberg further contended that should the Commission decide to exclude the San Andres zone, then the costs allocation to Yates should be \$151,728.44. (See Grynberg Exhibit 7 - June hearing).

20. During the June hearing, there was a discussion off the record after which the Commission ruled that neither party had calculated the allocation of well costs in accordance with the Commission's interpretation of Paragraph 25 of Order R-7393. (See page 69 - June Transcript). However, the Commission did not then, nor in the August hearing, state on the record its interpretation.

21. The case was then continued to the August 7, 1986 Commission hearing and the parties directed to

recalculate the allocations and to exchange those recalculations in advance of the August 7, 1986 hearing.

22. At the August 7, 1986 Hearing without providing a copy to Grynberg in advance of the hearing and over the objection of Grynberg, Yates introduced its allocation of costs (Yates Exhibit 2 - August hearing). That allocation followed the same formula that Yates had followed for the June hearing but this time showed a cost to the Deep formation of \$128,353.54 and a cost to the Yates interest of \$133,373.64.

23. At the August hearing, the Commission excluded the testimony of Mr. Grynberg concerning the potential of the San Andres zone and its share of the allocation of the costs of the well. (See page 56 - August hearing transcript).

24. Grynberg introduced a cost allocation exhibit showing an allocation of costs directly attributable to the Deep zone with the balance of the costs being allocated on a ratio of 81.89% to the Abo and 18.11% to the Deep zone with a resulting cost to the Yates interest for the well of \$153,773.11 (See Grynberg Exhibit 10 - August hearing).

25. One of the principal differences between Yates and Grynberg were the allocation of the following items:

<u>ITEM/TOTAL</u>	<u>Abo</u>	<u>PrePermian</u>
2/12/84 Schlumberger logging \$20,363.86		
Yates:	\$14,443.37	\$5,920.49
Grynberg:	10,705.24	\$9,658.62
Halliburton cement \$9,000.20		
Yates:	\$ 7,370.26	\$1,629.94
Grynberg:	5,243.44	\$3,451.74
Desert Drilling \$114,005.07		
Yates:	\$86,256.27	\$27,748.80
Grynberg:	27,748.80	\$60,002.67

26. As to the daily drilling costs, Grynberg presented evidence that of the 19 days spent drilling the well, ten days were directly attributable to the Deep formation.

27. Yates contended that the drilling costs should be allocated on a footage basis regardless of how much of the actual drilling time was spent in the deep formation. The Commission accepted Yates contention on this point. (Page 87 - August hearing Transcript).

28. As to the cementing costs, the Commission directed it be allocated 20 percent to the Abo and 80 percent to the Deep zone, based upon using 4200 feet as the top of the cement and Yates pick of the top of the Wolfcamp (Deep zone) which was 5378 feet.

29. As to the Schlumberger logging, Grynberg allocated 100 percent of the depth charge to the Deep zone for all of the four logs while Yates allocated 100

percent of the depth charge to the Deep zone on only one of the four logs with the balance of the logging depth charge being allocated between the deep and Abc zones based upon a footage ratio. Each party allocated the logging portion of the charges based upon the footage logged in the Deep zone. The Commission accepted Yates contention on this point. (Page 87 - August hearing Transcript).

30. In deciding each of the cost allocations set forth in paragraph 25 above, the Commission failed to follow the allocation formula set forth in Paragraph (25) of Order R-7393.

31. The Commission further held that the Order was still in effect, and denied Grynberg's motion to Dismiss notwithstanding the signature by Yates of the Grynberg AFE's. *not a separating agreement*

32. On December 31, 1986 the Commission entered Order R-7393-B finding that Yates' share of the cost of the well should be \$134,326.99.

33. Within twenty days of the date of Order R-7393-B, Grynberg has filed this Application for Rehearing.

GROUND S FOR REHEARING

POINT I: ORDER R-7393-B SHOULD BE REVERSED
BECAUSE THE COMMISSION FAILED TO
MAKE A "BASIC CONCLUSION OF FACT."

Order R-7393-B fails to comply with the applicable statutory and judicial mandates set forth in Continental Oil Co. v. Oil Conservation Commission, 70 N.M. 310, 373 P2d 809 (1962) by failing to find that Order R-7393-B will protect correlative rights and prevent waste. The Order is void of the requisite findings concerning waste and protection of correlative rights.

POINT II: ORDER R-7393-B SHOULD BE REVERSED
BECAUSE THE ORDER FAILS TO CONTAIN
SUFFICIENT FINDINGS.

Commission Order R-7393 provides a means by which any party can object to the costs of the well and obtain a hearing before the Commission to determine the reasonable costs of the well. Yates had no objection to and concedes that the total well cost of \$340,956.72 is a reasonable well cost. However, under the guise of that provision of the original compulsory pooling order, Yates filed an application to have the Commission decide whether Grynberg had correctly allocated the costs to the various zones in the well.

In deciding that issue, the Commission entered Order R-7393-B which contains Finding (8) thereby adopted the

allocation of costs submitted by Yates and by implication denied the allocation submitted by Grynberg. The Commission has failed to provide the necessary findings which disclose its reasoning for rejecting the Grynberg allocation and adopting, with modification, the Yates allocation.

In addition, the Order fails to disclose why the Commission did not consistently use the same formula for allocation of each of the well costs. Such an inconsistency, without explanation, fails to conform to disclosure requirements required by the New Mexico Supreme Court in Fasken v. Oil Conservation Commission, 87 N.M. 292, 532 P.2d 588 (1975). The Court, in Fasken, held that not only must the Commission order contain ultimate findings such as "prevention of waste and protection of correlative rights," the order must also contain sufficient findings to disclose the reasoning of the Commission.

POINT III: THE ALLOCATION OF COSTS SET FORTH IN
ORDER R-7393-B ARE CONTRARY TO
PARAGRAPH (25) OF ORDER R-7393.

On December 2, 1983, the Commission entered Order R-7393 which included the following:

(25) That estimated well costs for the Abo formation, except for costs directly attributable to the Precambrian, should be established on the basis of depth for each formation and that costs for the

Abo formation should not exceed 81.89 percent of the total costs of the proposed well, (5200 foot Abo depth/6350 foot depth = 0.8189).

The word "precambrian" was later corrected by a Nunc Pro Tunc order to correctly show the PrePermian.

The above finding required that all of the costs directly attributable to the Deep zone be determined and then the remaining amount to be divided on a ratio of 81.89% to the Abo and 18.11% to the Deep zone.

Mr. Grynberg's Exhibit 10 (August hearing) correctly applied the provisions of Order R-7393. In addition, Mr. Grynberg showed that the logging and daily drilling costs should be allocated to reflect the actual time spent in those activities in the Deep zone. Conversely, Yates used a footage allocation for some items and apportioned others based upon the 81.89% to the Abo and 18.11% to the Deep zone and used Grynberg's approach for still other items.

The Commission, without amending Order R-7393, and contrary to that order, decided to allocate the costs on a different basis and apparently has allocated certain direct costs to the Abo and certain direct costs to the Deep zone then divided some of the remaining balance between the two zones on a ratio of 81.89% to the Abo and 18.11% to the Deep zone and others on a footage basis different from that calculated in Order R-7393. At the August hearing, the Commission stated on the record that

it was not following Paragraph (25) of Order R-7393: "Mr. Grynberg, for what it's worth, I would point out that the method that is currently being used for allocation of costs under these conditions is substantially different from the one that's in this order..." (Page 44 - August hearing Transcript).

While the Commission stated at the August hearing that "this is certainly a confusing finding and I can understand why there have been problems with allocation of well costs." (See page 22 - August hearing Transcript) there is nothing in the subsequent Order R-7393-B to explain or justify why the Commission failed to follow the terms of the original order. Such action violates the requirements set forth by the New Mexico Supreme Court in Fasken.

POINT IV: ORDER R-7393-B IS NOT SUPPORTED BY SUBSTANTIAL EVIDENCE, IS ARBITRARY AND CAPRICIOUS AND IS CONTRARY TO LAW.

The following findings made by the Commission in Order R-7393-B are not supported by substantial evidence, are arbitrary and capricious and contrary to law:

(6) The Commission determined that neither Grynberg nor applicants have calculated the reasonable well costs as stated in the above-described order in accordance

with the Commission's interpretation of that order and required the parties to resubmit the allocation of costs based upon such interpretation.

(8) The Commission adopts the allocation of costs submitted by Yates on their August 7, 1986, Exhibit No. 2 except that the cementing costs as shown by the Halliburton invoice dated February 19, 1984 should be reallocated on the basis of the amount of cement above the base of the Abo and the amount of cement below the base of the Abo.

(9) Morris Ettinger, witness for Grynberg, established that the top of the cement was 4,200 feet and that the top of the Wolfcamp was located at 5,378 feet.

(10) One thousand one hundred seventy eight feet (1,178) of cement were placed in the well ^{below} below the base of the Abo.

(11) In accordance with the formula established by the Commission, \$4,827.97 should be allocated to depths above the Wolfcamp and \$4,172.23 should be allocated to depths below the Wolfcamp. These calculations are shown on Exhibit "A" attached hereto.

(12) Yates has paid Grynberg \$215,706.26 while the total amount due from Yates to Grynberg was \$134,326.99.

(13) After giving Grynberg credit for sums credited by him to applicants, Grynberg owes applicants the sum of \$78,770.96, all as shown on Exhibit "A" attached hereto.

POINT V: THE COMMISSION IMPROPERLY EXCLUDED GRYNBERG'S TESTIMONY AND FAILED TO ALLOCATE A PORTION OF THE WELL COSTS TO THE SAN ANDRES FORMATION.

At the June hearing, the Commission received evidence by Mr. Morris Ettinger on behalf of Grynberg concerning an allocation of a portion of the costs to the San Andres formation and admitted over the objection of Yate's attorney Grynberg's Exhibit 9 which showed how to make that allocation. (See pages 53-55 and 57-58 June Transcript). However, at the August Hearing the Commission sustained Yate's objection on relevancy and excluded Mr. Grynberg's testimony about the allocation of costs to the San Andres formation. (See pages 55-56 August Transcript.)

In order to accomplish the Commission's intended purpose of allocating the well costs between the parties on some reasonable basis, the Commission both at the June and August hearing admitted certain new evidence that was

not available when the original compulsory pooling order was entered on December 2, 1983. In addition, the Commission selectively used certain of that evidence to modify the provisions of paragraph (25) of the original order.

When it came to the evidence concerning which of the potential producing formations should participate in the allocation of well costs, the Commission made evidentiary rules in August that were inconsistent with prior rulings made in June.

The exclusion of Grynberg's August evidence was erroneous and inconsistent with the prior admission of similar evidence in June. The Commission's ruling is arbitrary, inconsistent, capricious, and contrary to law.

POINT IV: THE COMMISSION ERRONEOUSLY DENIED
GRYNBERG'S MOTION TO DISMISS THE
YATES' APPLICATION.

Subsequent to the Compulsory Pooling Order R-7393 entered effective December 2, 1983, Yates voluntarily executed the Grynberg's Authority for Expenditure for the subject well and prepaid its share of the costs of the well. Grynberg contends that this action by Yates constituted a separate voluntary agreement between the parties which reallocated the interests in the various spacing units and made the Commission compulsory Pooling order moot.

This issue was presented to the Commission at the August hearing and the Commission ruled adversely to Grynberg. (See page 50-52 August Transcript).

The Commission has historically viewed any agreement which is voluntarily entered into after the issuance of a compulsory pooling order to supersede that order. (See page 51 August Transcript). However, without evidence to support it, the Commission erroneously equated the signing of the Grynberg AFE's as simply an indication by Yates that they were signing to avoid the risk factor penalty of the compulsory pooling order. First, there is no evidence in the record to support the speculation by the Commission that Yates was simply avoiding the risk factor penalty, and second, the provision of Order R-7393 only required the prepayment by Yates of its share of the costs of the well. The Order does not require the execution by Yates of the AFEs. Such action by Yates can reasonably be concluded to be a voluntary agreement negating the need for the pooling order.

The Commission's failure to dismiss the application constitutes error.

WHEREFORE, GRYNBERG PETROLEUM COMPANY respectfully requests that the Commission grant a Rehearing in the above styled case and that after rehearing, the Commission vacate and set aside its Order R-7393-B and

enter its Order consistent with the matters set forth in
this Application for Rehearing.

Respectfully submitted:

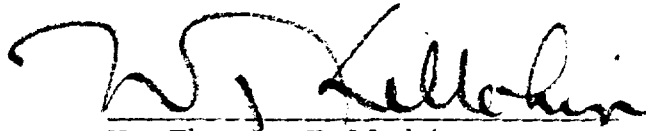
Kellahin, Kellahin & Aubrey



By
W. Thomas Kellahin
P. O. Box 2265
Santa Fe, New Mexico 87504

CERTIFICATE OF MAILING

I hereby certify that a copy of the foregoing
application was mailed to Joel Carson, Esq., Losee &
Carson, Attorneys at Law, P. O. Drawer 239, Artesia, New
Mexico 88210 on this 20 day of January, 1987.



W. Thomas Kellahin